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No. 92-1189

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

COLUMBUS-AMERICA DISCOVERY GROUP, INC.,
Petitioner,

v.

ATLANTIC MUTUAL INSURANCE COMPANY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF BATTELLE MEMORIAL INSTITUTE IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF BATTELLE MEMORIAL INSTITUTE IN SUPPORT OF PETITIONER

Battelle Memorial Institute ("Battelle") hereby moves, pursuant to Rule 37.2 of the Rules of this Court, for leave to file the attached brief as *amicus curiae*. Counsel for the petitioner has consented to the filing of this brief; counsel for the respondents have refused consent.

Battelle is an organization dedicated to combining scientific, technical, and management expertise to assist both the private sector and governmental entities in developing, commercializing, and managing technology. Battelle has developed extensive ocean engineering capabilities and has assisted the United States Navy with ship salvage, deep-ocean recovery, and undersea work systems.

Battelle is dedicated to applying and enhancing the technology needed to explore and research previously in-

accessible areas and to developing new technology that promises to greatly increase the extent of those endeavors. Progress in developing this technology will be affected by the results of this case.

Although the importance of expanding our horizons in deep ocean exploration is widely accepted, the fact remains that such endeavors rely almost exclusively on sophisticated and costly specialized technologies. See U.S. Congress, Office of Technology, *Technologies for Underwater Archaeology and Maritime Preservation—Background Paper*, OTA-BP-E-37, 8 (1987). Because exploration of outlying areas is costly, it cannot be accomplished without the participation and support of the private sector.

Financial incentives are needed for the private sector to finance the continued development of technologies required for recovery in deep-ocean environments. Battelle believes that progress in these areas of exploration and research will be significantly impaired if the Fourth Circuit's opinion in this case is allowed to stand.

For these reasons, the Court should grant this motion for leave to file the attached brief *amicus curiae* in support of the petitioner.

Respectfully submitted,

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February, 1993

QUESTION PRESENTED

May admiralty courts continue to infer abandonment of long-lost shipwrecks from the passage of many decades, non-use, and all other relevant facts and circumstances, and accordingly award ownership of a shipwreck to those who discover, recover and conserve it under the law of finds; or must courts award title to purported insurers and their successors who claim ownership of a shipwreck under the law of salvage on grounds that abandonment can never be found absent clear and convincing evidence that the purported owners expressly renounced title?

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BRIEF AMICUS CURIAE OF BATTELLE MEMORIAL INSTITUTE IN SUPPORT OF PETITIONER

STATEMENT OF INTEREST

Battelle Memorial Institute ("Battelle") is an organization dedicated to combining scientific, technical and management expertise to assist both the private sector and governmental entities in developing, commercializing and managing technology. Battelle has developed extensive ocean engineering capabilities and has assisted the United States Navy with ship salvage, deep ocean recovery and undersea work systems. Battelle believes that progress made in these areas of exploration and research will be impaired if the Fourth Circuit's opinion in this case is allowed to stand.

THE PETITION FOR CERTIORARI SHOULD BE GRANTED

I. THE FOURTH CIRCUIT'S REFUSAL TO INFER ABANDONMENT OF LONG-LOST SHIPWRECKS WARRANTS REVIEW BY THIS COURT

Dramatic improvements in technology have now opened the deep seas to exploration, research, and responsible enjoyment. Groups such as Battelle are deeply committed to not only applying and enhancing existing technology to enable such exploration and research, but also developing new technology. Progress in developing this technology will be distinctly affected by the results of this case.

II. THE FEDERAL GOVERNMENT'S NATIONAL POLICY ENCOURAGES THE DEVELOPMENT AND ENHANCEMENT OF TECHNOLOGIES FOR THE EXPLORATION OF THE DEEP OCEAN

Our national policy of encouraging the development of technology to assist in deep ocean exploration can be traced back to the Marine Resources and Engineering Development Act of 1966, 33 U.S.C. § 1101 *et seq.* (1988), "to develop, encourage, and maintain a coordinated, comprehensive, and *long-range* national program in marine science [1] for the benefit of mankind." 33 U.S.C. § 1101(a) (emphasis added). One of the primary purposes of this legislation is to promote "[t]he development and improvement of the capabilities, performance, use, and efficiency of vehicles, equipment, and instruments for use in . . . the marine environment." 33 U.S.C. § 1101(b)(6). To accomplish this laudatory objective, the President is responsible for ensuring that the federal government, in conjunction with states and private institutions and industry, develops a program comprised of a wide array of marine science activities, including exploration of the marine environment and marine engineering in general. 33 U.S.C. § 1103(a)(2).

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[1] The term "marine science" is specifically defined to include "engineering and technology in and with relation to the marine environment." 33 U.S.C. § 1107.

In recognition of the national significance of our vast marine environment, Congress supplemented the Marine Resources and Engineering Development Act with the passage of the Marine Sanctuaries Act in 1972. 16 U.S.C. § 1431 *et seq.* (1988) (amended 1992). The Marine Sanctuaries Act is designed to protect ocean resources by, among other things, "support[ing], promot[ing], and coordinat[ing] scientific research" of the marine environment. 16 U.S.C. § 1431(b)(3), (5).

III. THE TECHNOLOGIES REQUIRED FOR EXPLORING AND CONDUCTING RESEARCH IN REMOTE ENVIRONMENTS ARE EXPENSIVE

Although the importance of expanding our horizons through breakthroughs in deep-ocean exploration is widely accepted, the fact remains that such endeavors rely almost exclusively on sophisticated and costly specialized technologies. *See* U.S. Congress, Office of Technology, *Technologies for Underwater Archaeology and Maritime Preservation—Background Paper*, OTA-BP-E-37, 8 (1987). In fact, meaningful exploration of the ocean floor is virtually impossible without advanced equipment such as side-scan sonar, sub-bottom profilers, magnetometers and remotely operated vehicles. *See generally* Horrell, Note: *Telepossession is Nine-Tenths of the Law: The Emerging Industry of Deep Ocean Discovery*, 3 Pace Y.B. Int'l L. 309 (1991).

A. Because of the Cost of the Sophisticated Technologies Needed to Explore and Research Remote Areas, the Federal Government has Recognized the Critical Need to Involve the Private Sector in These Endeavors

In light of the fact that exploration of outlying areas is costly, it simply cannot be accomplished without the participation and support of the private sector. Because of Congress' acute awareness of this fact, one of the primary objectives of the Marine Resources and Engi-

neering Development Act of 1966 is to encourage "private investment enterprise in exploration, technological development, marine commerce, and economic utilization of the resources of the marine environment." 33 U.S.C. § 1101(b)(3). The Act accordingly envisions a "continuing partnership" among governmental agencies and "private industry, universities, organizations, and individuals concerned with or affected by ocean . . . resources." 33 U.S.C. § 1121(a)(5).

IV. THE FOURTH CIRCUIT'S DECISION SEVERELY IMPAIRS THE CONTINUED PRIVATE DEVELOPMENT OF MARINE TECHNOLOGIES BY REMOVING THE FINANCIAL INCENTIVES NEEDED FOR SUCH DEVELOPMENT

The Fourth Circuit's novel holding that title to long-lost property does not vest in those who labor to discover and preserve it unless they prove by "clear and convincing evidence" that a purported owner abandoned its interest in the property by express disclaimer, virtually guarantees that the law of salvage will be applied whenever long-lost property is recovered. *Columbus-America Discovery Group v. Atlantic Mutual Insurance Co.*, 974 F.2d 450, 464 (4th Cir. 1992). This is due largely to the fact that because of the passage of time and other factors, there is rarely, if ever, any evidence that the owner of long-lost property affirmatively renounced all rights to that property. *Id.* at 472 (Judge Widener dissenting). The decision of the Court of Appeals makes it difficult to attract the private funding and enterprising explorers required to explore and conduct research in methods of deep-ocean recovery. In the past, the incentives provided by the predictability that title to recovered long-lost items would vest in the discoverers under the prevailing law of finds were sufficient to attract private funding. *See Martha's Vineyard Scuba Headquarters, Inc. v. Unidentified, Wrecked and Abandoned Steam Vessel*, 833 F.2d 1059 (1st Cir. 1987); *Cobb Coin Co. v. Unidentified,*

Wrecked and Abandoned Sailing Vessel, 549 F. Supp. 540 (S.D. Fla. 1982); *Eads v. Brazleton*, 22 Ark. 499 (1861).

Without the financial incentives needed to finance the continued development and enhancement of the sophisticated technologies required for deep-ocean recovery, this source of funds will be adversely affected.

CONCLUSION

To encourage private funding and enterprising explorers to explore and conduct research in the methods and equipment for recovery in deep-ocean environments requires predictability that title to recovered long-lost items will vest in the recoverers. The Fourth Circuit's decision makes the determination of title unpredictable, thus discouraging private investment, which is contrary to the public policy of supporting research in the marine environment.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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